

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Greg Finch	Team: Squad #9	CCRB Case #: 201807690	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 09/13/2018 12:57 AM	Location of Incident: 1444 Park Place; 77th Precinct stationhouse	Precinct: 77	18 Mo. SOL 3/13/2020	EO SOL 3/13/2020	
Date/Time CV Reported Mon, 09/17/2018 4:53 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 09/17/2018 4:53 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Umar Khitab	20552	952929	077 PCT
2. POM Steven Rupnick	27055	955426	077 PCT
3. SGT Kevin Mccarthy	03347	949290	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Kevin Mccarthy	Abuse: At 1444 Park Place in Brooklyn, Sergeant Kevin Mccarthy frisked § 87(2)(b)	
B.SGT Kevin Mccarthy	Abuse: At 1444 Park Place in Brooklyn, Sergeant Kevin Mccarthy searched the vehicle in which § 87(2)(b) was an occupant.	
C.POM Umar Khitab	Force: At 1444 Park Place in Brooklyn, Police Officer Umar Khitab struck § 87(2)(b) with a car door.	
D.SGT Kevin Mccarthy	Abuse: At 1444 Park Place in Brooklyn, Sergeant Kevin Mccarthy refused to provide his name to § 87(2)(b)	
E.POM Umar Khitab	Abuse: At 1444 Park Place in Brooklyn, Police Officer Umar Khitab refused to provide his name to § 87(2)(b)	
F.POM Umar Khitab	Abuse: At 1444 Park Place in Brooklyn, Police Officer Umar Khitab refused to provide his shield number to § 87(2)(b)	
G.POM Steven Rupnick	Abuse: At 1444 Park Place in Brooklyn, Police Officer Steven Rupnick refused to provide his name to § 87(2)(b)	
H.POM Steven Rupnick	Abuse: At 1444 Park Place in Brooklyn, Police Officer Steven Rupnick refused to provide his shield number to § 87(2)(b)	
I.SGT Kevin Mccarthy	Abuse: At 1444 Park Place in Brooklyn, Sergeant Kevin Mccarthy threatened to arrest § 87(2)(b)	
J.SGT Kevin Mccarthy	Abuse: At the 77th Precinct stationhouse, Sergeant Kevin Mccarthy threatened to arrest § 87(2)(b)	
K.SGT Kevin Mccarthy	Discourtesy: At the 77th Precinct stationhouse, Sergeant Kevin Mccarthy spoke discourteously to § 87(2)(b)	
L.SGT Kevin Mccarthy	Abuse: At the 77th Precinct stationhouse, Sergeant Kevin Mccarthy took a recording of § 87(2)(b)	

### Case Summary

On September 17, 2018, § 87(2)(b) filed this complaint via the CCRB's online website. On September 13, 2018, at approximately 12:57 a.m., § 87(2)(b)'s vehicle was stopped for alleged reckless driving in front of 1444 Park Place in Brooklyn by Sergeant Kevin McCarthy, Police Officer Steven Rupnick, and Police Officer Umar Khatab, all of the 77<sup>th</sup> Precinct. Sgt. McCarthy allegedly frisked § 87(2)(b) (**Allegation A – Abuse of Authority:** § 87(2)(g)). Sgt. McCarthy supervised the search of § 87(2)(b)'s vehicle (**Allegation B – Abuse of Authority:** § 87(2)(g)). PO Khatab allegedly struck § 87(2)(b) with a car door (**Allegation C – Force:** § 87(2)(g)). Sgt. McCarthy, PO Khatab and PO Rupnick allegedly refused to provide their names to § 87(2)(b) and PO Khatab and PO Rupnick allegedly refused to provide their shield numbers to § 87(2)(b) (**Allegation D – Abuse of Authority:** § 87(2)(g)); **Allegation E – Abuse of Authority:** § 87(2)(g); **Allegation F – Abuse of Authority:** § 87(2)(g); **Allegation G – Abuse of Authority:** § 87(2)(g); **Allegation H – Abuse of Authority:** § 87(2)(g)). Sgt. McCarthy allegedly threatened to arrest § 87(2)(b) (**Allegation I – Abuse of Authority:** § 87(2)(g)). PO Khatab, under the instructions of Sgt. McCarthy, issued § 87(2)(b) a criminal court summons for § 87(2)(b) (Board Review 01). Later that day, at approximately 11:22 p.m., Sgt. McCarthy allegedly threatened to arrest § 87(2)(b) and spoke discourteously to § 87(2)(b) at the 77<sup>th</sup> Precinct stationhouse in Brooklyn (**Allegation J – Abuse of Authority:** § 87(2)(g); **Allegation K – Discourtesy:** § 87(2)(g)). Sgt. McCarthy took an audio recording of § 87(2)(b) on his department-issued cell phone (**Allegation L – Abuse of Authority:** § 87(2)(g)).

Video footage and audio were obtained which partially captured § 87(2)(b)'s stationhouse interaction (Board Review 02; Board Review 03).

### Findings and Recommendations

**Allegation A – Abuse of Authority: At 1444 Park Place in Brooklyn, Sergeant Kevin McCarthy frisked § 87(2)(b)**

**Allegation B – Abuse of Authority: At 1444 Park Place in Brooklyn, Sergeant Kevin McCarthy searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that Sgt. McCarthy, PO Khatab, and PO Rupnick stopped § 87(2)(b)'s vehicle and that PO Khatab and PO Rupnick searched § 87(2)(b)'s vehicle, under the supervision of Sgt. McCarthy. It is also undisputed that § 87(2)(b) was issued a summons at the conclusion of this incident for § 87(2)(b).

§ 87(2)(b) alleged that after the officers stopped him and escorted him out of his vehicle, Sgt. McCarthy frisked § 87(2)(b)'s jacket and pants pockets. PO Khatab and PO Rupnick searched § 87(2)(b)'s vehicle, including the trunk. § 87(2)(b) was facing away from the vehicle for much of the search and could not see what compartments the officers searched. § 87(2)(b) denied smoking marijuana and that any officer accused him of possessing marijuana or claimed to smell marijuana.

According to Sgt. McCarthy, upon approach, he noticed an odor of marijuana emanating from § 87(2)(b)'s vehicle, and later PO Rupnick recovered marijuana flakes in the vehicle's center console (Board Review 05). Sgt. McCarthy did not recall if he frisked § 87(2)(b). PO Khatab searched § 87(2)(b)'s vehicle. The officers used discretion and decided not to issue § 87(2)(b) a summons for the marijuana.

PO Rupnick's and PO Khitab's statements were generally consistent with PO Khitab's statement, except where noted below. PO Rupnick did not frisk § 87(2)(b) PO Rupnick did not know if PO Khitab or Sgt. McCarthy frisked § 87(2)(b) (Board Review 07). PO Khitab stated that none of the officers frisked § 87(2)(b) All three officers documented in their memo books that they observed an odor of marijuana emanating from § 87(2)(b)'s vehicle (Board Review 38).

§ 87(2)(g)

**Allegation C – Force: At 1444 Park Place in Brooklyn, Police Officer Umar Khitab struck § 87(2)(b) with a car door.**

It is undisputed that PO Khitab closed § 87(2)(b)'s driver side door.

According to § 87(2)(b) PO Khitab told § 87(2)(b) to sit down in his car and slammed the driver side door on § 87(2)(b)'s legs before he fully entered the vehicle.

According to PO Khitab, after § 87(2)(b) reentered his vehicle, PO Khitab closed § 87(2)(b)'s driver side door, but § 87(2)(b)'s legs were inside the car and the door did not strike § 87(2)(b)'s leg. § 87(2)(b) waited "a second or two" and then loudly said "Ow" even though the door did not touch his leg.

Sgt. McCarthy's and PO Rupnick's statements were consistent with PO Khitab's.

§ 87(2)(g)

**Allegation D – Abuse of Authority: At 1444 Park Place in Brooklyn, Sergeant Kevin McCarthy refused to provide his name to § 87(2)(b)**

**Allegation E – Abuse of Authority: At 1444 Park Place in Brooklyn, Police Officer Umar Khitab refused to provide his name to § 87(2)(b)**

**Allegation F – Abuse of Authority: At 1444 Park Place in Brooklyn, Police Officer Umar Khitab refused to provide his shield number to § 87(2)(b)**

**Allegation G – Abuse of Authority: At 1444 Park Place in Brooklyn, Police Officer Steven Rupnick refused to provide his name to § 87(2)(b)**

**Allegation H – Abuse of Authority: At 1444 Park Place in Brooklyn, Police Officer Steven Rupnick refused to provide his shield number to § 87(2)(b)**

It is undisputed that Sgt. McCarthy provided his shield number to § 87(2)(b) during this incident, and that after this incident § 87(2)(b) travelled to the 77<sup>th</sup> Precinct to obtain PO Khitab's and PO Rupnick's shield numbers. It is undisputed that PO Khitab's name was on the summons.

According to § 87(2)(b) he asked all three officers for their names and shield numbers and all three refused to provide them. Sgt. McCarthy told § 87(2)(b) "The only way we can give you proof of this stop is if we give you a ticket." § 87(2)(b) said he did not want a ticket, because he did not do anything wrong. The three officers reentered the unmarked car, and almost drove away and then approached § 87(2)(b) after he took a photo of the RMP. § 87(2)(b) again asked the officers for their names and shield numbers. PO Khitab and PO Rupnick told § 87(2)(b) that they did not have to give him the requested information. PO Khitab pulled out his shield which was on a necklace, and had black tape covering the shield numbers. Sgt. McCarthy explained that PO Khitab had black tape over his shield because of 9/11. § 87(2)(b) asked for a supervisor. Sgt.

McCarthy pulled out his shield to show that he was a supervisor. Sgt. McCarthy pulled his shield towards § 87(2)(b) and § 87(2)(b) took a photo of it. Sgt. McCarthy said, “You got my badge numbers, you don’t need their badge numbers.” § 87(2)(b) obtained PO Khitab’s name from the summons, and provided PO Khitab’s name to the investigation in his original complaint. Later that day, § 87(2)(b) travelled to the 77<sup>th</sup> Precinct stationhouse and asked Sgt. McCarthy to provide PO Khitab’s and PO Rupnick’s shield numbers, which he provided by writing them on a paper.

According to Sgt. McCarthy, § 87(2)(b) asked for his shield number, which he verbally provided and presented his shield to § 87(2)(b) which § 87(2)(b) took a cell phone picture of. Sgt. McCarthy did not recall if § 87(2)(b) asked him for his name, nor if § 87(2)(b) asked PO Khitab or PO Rupnick for their names or shield numbers. Sgt. McCarthy did not recall if any of the officers had mourning bands on their shields. Sgt. McCarthy did not recall if he said to § 87(2)(b) “You already have my badge number, you don’t need their names and badge numbers.” § 87(2)(b) Sgt. McCarthy denied saying “The only way we can give you our names is if we give you a ticket for the stop.”

PO Khitab’s and PO Rupnick’s statements are generally consistent with Sgt. McCarthy’s statement. According to PO Khitab, § 87(2)(b) asked him for his name and shield number, which PO Khitab verbally provided and he presented his shield to § 87(2)(b) According to PO Rupnick, § 87(2)(b) did ask him for his name and shield number, to which PO Rupnick responded by orally providing his name and shield number. PO Rupnick denied that Sgt. McCarthy told § 87(2)(b) “You have my badge number, you don’t need their badge numbers.”

According to PO Rupnick, all three officers presented their shields to § 87(2)(b) on scene.

NYPD Patrol Guide, Procedure 203-09 (Board Review 22) states that members will clearly state their names and shield numbers for members of the public and provide them when requested.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Allegation I – Abuse of Authority: At 1444 Park Place in Brooklyn, Sergeant Kevin McCarthy threatened to arrest § 87(2)(b)**

According to § 87(2)(b) Sgt. McCarthy yelled at him to "Calm down" during the vehicle stop. The volume of Sgt. McCarthy's voice caused nearby neighbors to look out of their windows and start video recording the vehicle stop. § 87(2)(b) denied yelling at any point during the vehicle stop, except for yelling “Somebody help me, can you help me?” at a passing marked patrol car on Park Place, which did not stop. After the vehicle search, officers told § 87(2)(b) that he was free to go, reentered their vehicle and began to drive away. § 87(2)(b) exited his car and took a photo of the officers’ unmarked vehicle (Board Review 21). After § 87(2)(b) took the photo, the vehicle stopped, all three officers exited the unmarked car, and reapproached § 87(2)(b)

§ 87(2)(b) on the street. Sergeant McCarthy told § 87(2)(b) he would take him to jail for disorderly conduct and “tell his job” about this incident.

Sgt. McCarthy did not recall if he threatened to arrest § 87(2)(b) for disorderly conduct, but noted that § 87(2)(b) was committing disorderly conduct during the vehicle stop by screaming “at the top of his lungs” for help which caused neighbors nearby to look out of their windows, exit their houses, and eventually a crowd to form on the sidewalk around the vehicle stop.

PO Khitab’s and PO Rupnick’s statements are consistent with Sgt. McCarthy’s statement. PO Rupnick noted that § 87(2)(b) failed to provide his driver’s license during the vehicle stop, which is an arrestable offense, and that § 87(2)(b) was not arrested due to officers’ discretion.

§ 87(2)(g)

**Allegation J – Abuse of Authority: At the 77th Precinct stationhouse, Sergeant Kevin McCarthy threatened to arrest § 87(2)(b)**

**Allegation K – Discourtesy: At the 77th Precinct stationhouse, Sergeant Kevin McCarthy spoke discourteously to § 87(2)(b)**

According to § 87(2)(b) after he asked Sgt. McCarthy for PO Khitab’s and PO Rupnick’s shield numbers, Sgt. McCarthy threatened to arrest him for disorderly conduct in the stationhouse. Sgt. McCarthy later remarked, within earshot of § 87(2)(b) “Can you believe I shook this piece of shit’s hand?” to another officer.

According to Sgt. McCarthy, he did not threaten to arrest § 87(2)(b) and denied making the alleged comment or using any profanity in regard to § 87(2)(b)

§ 87(2)(g)

**Allegation L – Abuse of Authority: At the 77th Precinct stationhouse, Sergeant Kevin McCarthy took a recording of § 87(2)(b)**

It is undisputed that Sgt. McCarthy recorded § 87(2)(b) on his department-issued cell phone during § 87(2)(b)’s visit to the 77<sup>th</sup> Precinct stationhouse to obtain information on the officers he had interacted with earlier in the day (Board Review 05; Board Review 02; Board Review 31). The three-minute recording is an audio recording of the conclusion of § 87(2)(b)’s conversation with Sgt. McCarthy, and begins with Sgt. McCarthy verbally providing PO Khitab’s and PO Rupnick’s shield numbers, and later in the recording Sgt. McCarthy questions § 87(2)(b) about the earlier vehicle stop, repeatedly asking him, “Which one assaulted you?” Sgt. McCarthy provided this recording to the CCRB and played it from his department-issued cell phone during his CCRB interview.

Sgt. McCarthy noted that § 87(2)(b) wore a sling during his second visit to the 77<sup>th</sup> Precinct stationhouse, but not his first visit to the 77<sup>th</sup> Precinct stationhouse less than a day earlier. § 87(2)(b) was unaware of Sgt. McCarthy’s recordings, and thus did not allege that he was recorded.

Operations Order 20: Use of Department Smartphones and Tablets prohibits officers from using Department smartphones to photograph or record performance of non-enforcement

functions or administrative duties within a Department facility (Board Review 30). Members of service are permitted to record any public interaction, regardless of context, that escalates and becomes adversarial.

§ 87(2)(g)

#### Civilian and Officer CCRB Histories

- § 87(2)(b)
- Sgt. McCarthy been a member-of-service for 6 years and this is the fifth CCRB complaint to which he has been a subject with 10 allegations.
  - #201200526 involved a frisk allegation. The Board substantiated the frisk allegation and recommended Command Discipline, and the NYPD imposed Instructions.
  - #201901490 involved stop, search and frisk allegations. The Board substantiated the stop allegation and recommended Command Discipline B. CTS does not list the NYPD discipline.
- PO Rupnick has been a member-of-service for 6 years and this is the fifth CCRB complaint to which he has been a subject with 15 allegations.
  - #201901490 involved stop, search and frisk allegations. The Board substantiated the stop allegation and recommended Command Discipline B. CTS does not list the NYPD discipline.
- PO Khitab has been a member-of-service for 7 years and this is the third CCRB complaint to which he has been a subject with 18 allegations.
  - #201610447 involved a refusal of name and shield allegation. The Board substantiated the allegation and recommended Command Discipline B, and the NYPD imposed Formalized Training.
  - #201706371 involved a vehicle stop allegation. The Board substantiated the allegation and recommended Charges. CTS does not display the NYPD Disposition.

#### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On December 12, 2018, § 87(2)(b) filed a Notice of Claim with the City of New York claiming negligence, assault and battery, emotional distress, false imprisonment, malicious prosecution, failure to supervise, failure to intervene and negligent hiring/training seeking \$1,000,000 as redress (Board Review 08). There is no 50-H hearing scheduled.

- § 87(2)(b) [Redacted]  
[Redacted]  
[Redacted]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date